

AMENDED IN ASSEMBLY SEPTEMBER 12, 2003

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

AMENDED IN ASSEMBLY SEPTEMBER 5, 2003

AMENDED IN SENATE APRIL 23, 2003

SENATE BILL**No. 1064**

Introduced by Senator Burton

February 27, 2003

An act to amend ~~Sections 6902.2, 19047, 19333, and 19345~~ *Section 6902.2* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1064, as amended, Burton. Income and corporation tax appeals: sales and use tax credit.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit until January 1, 2004, in an amount equal to 6% of the amount paid or incurred on or after January 1, 1994, for qualified property that is placed in service in this state. Under those provisions, qualified property includes tangible personal property purchased to be used primarily (1) in any stage of manufacturing, processing, refining, fabricating, or recycling of property, as specified, (2) in research and development, or (3) to maintain, repair, measure, or test that property. The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. The Sales and Use Tax Law permits a

person who has paid sales tax reimbursement to a retailer or use tax on a purchase or purchases of property, in lieu of claiming the credit for qualified manufacturing property under the Personal Income Tax Law or the Corporation Tax Law, to file a claim *with the State Board of Equalization* for a refund equal to the amount of the credit, as specified.

This bill would make a clarifying change to those sales and use tax refund provisions that would apply to any claim for refund ~~decided by~~ *filed with* the State Board of Equalization on or after August 7, 2003.

~~Existing laws require the State Board of Equalization to hear and determine income and corporation tax appeals, as provided.~~

~~This bill would require that any determination of the State Board of Equalization to modify the action of the Franchise Tax Board, except as specified, be approved by no less than 3 members of the State Board of Equalization, and that if less than 3 members of the State Board of Equalization vote to modify the action of the Franchise Tax Board, that action is sustained.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6902.2 of the Revenue and Taxation
 2 Code is amended to read:
 3 6902.2. (a) (1) In lieu of claiming the credit allowed by
 4 Section 17053.49 or 23649, a person who has paid sales tax
 5 reimbursement to a retailer or use tax on a purchase or purchases
 6 of property for which a credit may be allowed pursuant to those
 7 sections, may file a claim for refund equal to the credit amount that
 8 would otherwise be allowed pursuant to those sections. Any claim
 9 so filed shall be submitted to the board on a form prescribed by the
 10 board, shall be filed no earlier than the date a claim could have been
 11 made for a tax credit or carryover of a credit under Section
 12 17053.49 or 23649, whichever is applicable, and shall be for an
 13 amount not in excess of the amount of the credit that could have
 14 been used to reduce the “net tax,” as defined in Section 17039, or
 15 the “tax,” as defined in Section 23036. Any credit carried over
 16 pursuant to Section 17053.49 or Section 23649 may not be
 17 refunded under this section until the credit carried over could be
 18 applied to reduce the “net tax” (as defined in Section 17039) or
 19 the “tax” (as defined in Section 23036), as applicable. Under no

circumstances may any claim for refund exceed the “net tax,” as defined by Section 17039, or the “tax,” as defined by Section 23036, after the allowance of any credits authorized by Section 17039 or 23036. A claim for refund shall, unless the sale or use of the property is otherwise exempt under this part, be accompanied by proof of payment of the tax to a retailer, including, but not limited to, a copy of an invoice or purchase contract that indicates the following:

- (A) The date on which the purchase occurred.
- (B) A description of the property purchased.
- (C) The price paid for the property.
- (D) The amount of tax paid with respect to the purchase.

(2) In the case of a person who has self-reported use tax to the board, the claim for refund shall also indicate the amount of use tax paid and the period for which that tax was remitted.

(3) Any person who claims a refund under this section shall make an irrevocable election to waive the equivalent amount of credit allowed under Section 17053.49 or 23649. Any refund claimed under this section shall be in lieu of claiming any credit under Section 17053.49 or 23649. Any person electing to file a claim for refund pursuant to this section shall provide a copy of the personal or corporation tax return on which the tax liability was assessed for which the in-lieu refund is being claimed under this section.

(b) No interest shall be paid on any refund made pursuant to this section.

(c) Notwithstanding Section 6961, the board may recover any refund or part thereof that is erroneously made pursuant to this section. In recovering any erroneous refund made pursuant to this section, the board, in its discretion, may issue a deficiency determination in accordance with Article 2 (commencing with Section 6481) or Article 4 (commencing with Section 6536) of Chapter 5. Except in the case of fraud, that determination shall be made within three years from the last day of the month following the quarterly period in which the board approved the refund.

(d) The board shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the board and the Franchise Tax Board, of the persons who during the year have claimed a refund of sales or use tax under this section and the amount of the refund issued to each person.

(e) Any refund approved by the board pursuant to this section shall be approved by no fewer than 3 members of the board, and shall be payable from the General Fund.

SEC. 2. ~~Section 19047 of the Revenue and Taxation Code is amended to read:~~

~~19047. (a) The board shall hear and determine the appeal and thereafter shall forthwith notify the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.~~

~~(b) Any determination of the board to modify the action of the Franchise Tax Board (other than modifications in accordance with concessions made in writing by the Franchise Tax Board during the appeal) shall be approved by no less than three members of the board. If less than three members of the board vote to modify the action of the Franchise Tax Board, that action (as modified in accordance with concessions made in writing by the Franchise Tax Board) is sustained.~~

SEC. 3. ~~Section 19333 of the Revenue and Taxation Code is amended to read:~~

~~19333. (a) The board shall hear and determine the appeal and thereafter shall forthwith notify the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.~~

~~(b) Any determination of the board to modify the action of the Franchise Tax Board (other than modifications in accordance with concessions made in writing by the Franchise Tax Board during the appeal) shall be approved by no less than three members of the board. If less than three members of the board vote to modify the action of the Franchise Tax Board, that action (as modified in accordance with concessions made in writing by the Franchise Tax Board) is sustained.~~

SEC. 4. ~~Section 19345 of the Revenue and Taxation Code is amended to read:~~

~~19345. (a) The board shall hear and determine the same and thereafter shall forthwith notify the taxpayer and the Franchise Tax Board of its determination and the reasons therefor.~~

~~(b) Any determination of the board to modify the action of the Franchise Tax Board (other than modifications in accordance with concessions made in writing by the Franchise Tax Board during the appeal) shall be approved by no less than three members of the board. If less than three members of the board vote to modify the action of the Franchise Tax Board, that action on the disallowance~~

1 of interest (as modified in accordance with concessions made in
2 writing by the Franchise Tax Board) is sustained.

3 ~~SEC. 5.—~~

4 *SEC. 2.* The amendments made to subdivision (a) of Section
5 6902.2 of the Revenue and Taxation Code by Section 1 of this act
6 are declaratory of existing law, but are effective for any claims for
7 refund ~~decided by~~ *filed with* the State Board of Equalization on or
8 after August 7, 2003.

